What You Should Know About

THE *LEGAL* DEFINITION OF 'VOLUNTEER'

By Robert A. Christenson

WE KNOW THAT A VOLUNteer is someone who possesses certain skills and talents and freely shares them with other people and organizations. We know that volunteers have a deep sense of social responsibility and moral obligation. We know that volunteers really do get paid, but payment comes in non-monetary forms. We know that volunteers are vital to the American way of life.

Yes, we know what a volunteer is in the social service context. But did you know that the *legal definition* of "volunteer" is strikingly different than the commonly used social service definition? This is best understood by grasping the legal concepts of "pure volunteer" and "gratuitous employee."

Let's begin with the pure volunteer. *Black's Law Dictionary* states in part that a [pure] volunteer is "one who intrudes himself into a matter which does not concern him . . . ." *Corpus Juris 2d*, a legal encyclopedia, further defines the [pure] volunteer as

> . . . one who does or undertakes to do that which he is not legally or morally bound to do, and which is not in pursuance or protection of any interest; one who intrudes himself into matters which do not concern him. The word is more particularly defined as meaning one who enters into service of his own free will; one who gives his service without any express or implied promise of renumeration; one who has no interest in the work, but nevertheless undertakes to assist therein; one who merely offers his service on his own free will, as opposed to one who is conscripted.

Legally, the pure volunteer lives under a very narrow definition, and can best be clarified by an example common to us all: While driving down the highway you notice a car parked beside the road with a lone occupant staring at a flat tire. You stop, and without concerning yourself about whether you should become involved or not, you begin to assist in changing the flat tire. While you are jacking up the car, the jack flies out and the car falls on your leg as well as causing injury to the driver of the car.

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According to the standard legal definition, you almost certainly will be considered a pure volunteer because you assisted the driver at your own free will, had no legal duty to become involved, received no payment for your involvement, and no one was controlling your actions. Consequently, as a pure volunteer, you are responsible for your own injuries and you cannot recover from the driver you assisted. As a pure volunteer you assumed the risk of any injury you might receive.

The famous case of *Richardson* v. *Babcock*, 175 F. 897 (1st. Cir. 1910), vividly points this out. Here, a boiler operator, completely at his own behest, helped several equipment installers move a heavy metal tube and was killed in the process. No recovery was allowed Richardson's family against the installers for negligently causing Richardson to be crushed because he was legally a pure volunteer. The court stated,"The facts plainly show . . . that he [Richardson] took hold to help as men oftentimes give a lift at the wheel when they find a neighbor stuck in the mud; and under such circumstances there is no liability on the part of the neighbor for an injury received, unless the injured party established gross negligence, wilfulness or wantonness in respect to his safety."

Now that you have no recourse for your injury because of your pure volunteer status, you will again be surprised to know that you may be liable to the driver for the injury he received while you were helping him change the flat tire! The courts have said that once someone undertakes a rescue or some other purely voluntary act, that person not only runs the risk of injury but also may be liable to the person he or she is attempting to help.

For example, in *Zelenco* v. *Gimbel Bros. Co.*, 287 N.Y.S. 134 (1935), store owners were held responsible for aggravation of an illness of a customer taken sick in the store when they placed her in a room (acting as pure volunteers) and neglected to summon medical help for six hours. The court stated, "If a [person] undertakes a task, even if under no duty to undertake it, the [person] must not omit to do what an ordinary man would do in performing the task." So if you are placed in a position to assist someone on the spur of the moment, be sensible in your actions!

In response to the vast liability of the pure volunteer, especially in the

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emergency medical situation, more than thirty states have passed "good samaritan statutes." These statutes absolve the provider of emergency care from liability for any harm his or her actions might cause, provided the actions are not grossly negligent. It is important to read the appropriate good samaritan statute in your state to see what type of pure volunteer it protects. Some statutes apply only to physicians and nurses (ostensibly to avoid spurious medical malpractice claims), while others apply to any person offering emergency aid. Likewise, the statutes differ in definitions of emergency situation and when the statutes apply.

Remember, the good samaritan statute is not a panacea absolving the pure volunteer from liability in all cases. Great liability still exists except in those narrow emergency situations in which the good samaritan statutes apply.

Strangely enough, the pure volunteer is a rare person indeed. Because of the narrow definition, a pure volunteer usually surfaces in the rescue or good-neighbor situation and is seldom found working for a social service organization.

In the social service setting, we usually do not view volunteers as employees. Many times, however, volunteers fall into the legal category of "gratuitous employee." In determining whether or not a volunteer is a gratuitous employee, a two-part test is used. First, whether or not the volunteer is subject to the control of the person or organization being served, and second, whether or not the volunteer has an interest in the task being performed.

For example, in *Bond* v. *Cartwright Little League, Inc.*, 536 p.2d 697 1975), the Cartwright Little League purchased several large lights from a municipal baseball field and solicited "volunteer" help in removing the lights from atop the 100-foot-tall poles. As fate would have it, a volunteer started up a pole and fell forty feet to the ground, injuring himself.

The Arizona Supreme Court reasoned that the volunteer was not a pure volunteer, which would have meant no recovery for the injured volunteer. Instead, the court stated that representatives of the Cartwright Little League set the time and place as well as the manner in which the lights were to be removed and had control over "... the helper's actions while he was working for Cartwright Little League." Therefore, because Cartwright Little League directed and controlled the actions of the volunteer, he was legally considered a gratuitous employee of Cartwright Little League who was liable for the volunteer's injuries.

In another gratuitous employee case, the Washington Court of Appeals in *Baxter* v. *Morningside, Inc.*, 521 P.2d 948 (1974), was faced with a volunteer driver for a charitable organization negligently causing injury to several people. The injured persons sued both the volunteer driver and the charitable organization on the theory that the volunteer driver was a gratuitous employee of the charitable organization and the standard legal doctrine of "respondeat superior," which holds an employer liable for the negligent acts of his or her employees, applied. The Washington court agreed and stated that the charitable organization controlled or could have controlled the physical conduct and performance of the volunteer driver and therefore was vicariously liable for the volunteer driver's actions.

In a slightly different context, the Arizona Court of Appeals in *Scottsdale Jaycees, Inc.* v. *Superior Court of Maricopa County, Weaver*, 499 P.2d 185 (1972), found that volunteer delegates to a state Jaycee meeting were not gratuitous employees of the charitable civic organization until they arrived at the meeting and proceeded to exercise their duties as delegated. This case emphasizes the importance of the volunteer job description because it legally establishes the gratuitous employment boundaries for both the volunteer and the organization being served.

When it is clear that the volunteer is indeed a gratuitous employee and is working within the limits of a volunteer job description, there is an affirmative duty for the charitable organization being served to provide a reasonably safe working environment for the gratuitous employee.

The Arizona Supreme Court found in *Vickers* v. *Gercke*, 340 P.2d 987 (1959), that a church operating a school cafeteria violated its duty of care to a gratuitous employee when a kitchen was inadequately lighted and unclean, causing the gratuitous employee to fall and sustain serious injury. A church must provide its gratuitous employees with a safe place to work and to exercise reasonable care in maintenance of this work area. This rule would apply to the work settings in other organizations as well.

Even though the courts have developed the status of the gratuitous employee to avoid the pit-falls of the pure volunteer situation, a gratuitous employee may be barred from recovery from a charitable organization in some cases.

For example, in *Olson* v. *Kem Temple, Ancient Arabic Order of the Mystic Shrine*, 43 N.W.2d 385 (1950), the North Dakota Supreme Court held that although the gratuitous employee was working within the limits of his volunteer job description, recovery was denied when the gratuitous employee fell off a small step-ladder and sustained injury. Under North Dakota law, a step-ladder is considered a "simple tool" and a charitable organization cannot be held liable for the gratuitous employee's safe operation thereof. The court reasoned, "Where the tool or appliance is simple in construction and a defect therein is discernible without special skill or knowledge, and the employee is as well qualified as the employer to detect the defect and appraise the danger resulting therefrom, the employee may not recover damages from his employer for an injury due such defect that is unknown to the employer." Volunteers should inspect carefully any simple tools such as step-ladders, hammers, screw drivers and so on, before they use them. If they don't, they may find they will have no recovery for injuries they receive from their use.

So there you have it. Socially speaking, a person may be a volunteer, but legally, he or she is more than likely a gratuitous employee. The significance of the gratuitous employee standing is that, as such, he/she has certain rights and duties under law—to work in a reasonably safe environment and to work within the limits of a volunteer job description. In addition, a gratuitous employee must perceive danger in certain obvious working situations, as well as notice any obvious defects in any simple tools being used.

Note: To look up the complete text of the legal cases mentioned in this article, take the title of the case and the citation that follows it to a law library and ask the librarian for assistance. Law libraries can be found in law schools, some local bar associations and many large law firms.—Ed.